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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,276	12/29/2000	John Belcea	GEH-01-064	9138

7590 06/01/2005

John S. Beulick
Armstrong Teasdale LLP
Suite 2600
One Metropolitan Sq.
St. Louis, MO 63102

EXAMINER

SHARON, AYAL I

ART UNIT	PAPER NUMBER
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2123

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/752,276

Applicant(s)

BELCEA, JOHN

Examiner

Ayal I. Sharon

Art Unit

2123

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 6-13, 19-22, 28-35 and 41-44.
Claim(s) rejected: 1-5, 14-18, 23-27, 36-40 and 45.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

ADVISORY ACTION

Introduction

1. An Amendment to claim 45 of U.S. Application 09/752,276 was filed on 05/09/2005, along with a Request for Reconsideration.

Re: Amendment

2. The amendment to claim 45 consists of changing the position of the word "and" at the end of the claim. This does not place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Re: Request for Reconsideration

3. Examiner finds Applicant's arguments regarding the objection to the specification to be unpersuasive. Examiner maintains that the changes of the units of the parameters constitutes new matter. As applicant has admitted in the remarks section of the most recent amendment (see p.22, 1st paragraph), the originally filed specification was erroneous and inoperative.
4. Examiner maintains that the inoperative nature of the originally filed specification provides grounds for 35 U.S.C. §101 rejections.
5. In regards to claims 1 and 23, Examiner finds Applicant's arguments regarding the Gruber reference to be unpersuasive. Applicant agrees (see p.22, paragraph

4 of the After Final amendment) that the Gruber reference teaches a control system for operating multi-locomotive powered trains using suboptimal control strategies, yet traverses (see p.23, paragraph 3, and p.25, paragraph 2)

Examiner's argument that "it is inherent that a control system collects sensor data, otherwise the control system cannot perform its intended function of controlling." Applicant has not directly responded to this argument.

6. Moreover, in regards to claim 1, Applicant argues that the claimed "consist force balance" does not correspond to an equilibrium or balance of zero coupler forces as suggested in the Office Action (see p.24, paragraph 2). Examiner has found Applicant's alternate definition (see p.24, paragraph 2) to be unpersuasive.
7. All of the remaining rejected claims depend on the rejected independent claims 1 and 23, and inherit their defects.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ayal I. Sharon whose telephone number is (571) 272-3714. The examiner can normally be reached on Monday through Thursday, and the first Friday of a biweek, 8:30 am – 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached at (571) 272-3716.

Any response to this office action should be faxed to (703) 872-9306, or mailed to:

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or hand carried to:

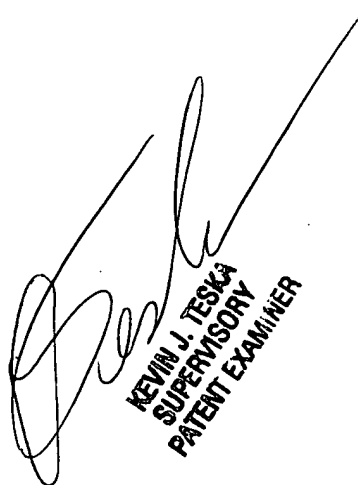
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Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center 2100 Receptionist, whose telephone number is (571) 272-2100.

Ayal I. Sharon

Art Unit 2123

May 19, 2005



KEVIN J. TESKA
SUPERVISORY
PATENT EXAMINER